IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'OURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

OP.No. 4191 of 1999(Y)

PETITIONER:

SYNDICATE BANK, A BODY CORPORATE CONSTITUTED AND FUNCTIONING UNDER THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKING, 1970) HAVING ITS REGISTERED OFFICE AT MANIPAL, KARNATAKA AND IS REPRESENTED BY THE DEPUTY GENERAL MANAGER, SYNDICATE BANK, ZONAL OFFICE AMONG OTHER PLACES AT TRIVANDRUM, DULY AUTHORISED AND EMPOWERED TO REPRESENT THE PETITIONER

BY ADV. SRI.R.S.KALKURA

RESPONDENTS:
---

1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO TAX DEPARTMENT, GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2. THE ASST. COMMISSIONER, SALES TAX, SALES TAX OFFICE, ALLEPPEY.

3. SALES TAX OFFICER, OFFICE OF THE SALES TAX OFFICER, KAYAMKULAM.

4. SALES TAX OFFICER, IST CIRCLE, THALASSERRY.

BY SR.GOVERNMENT PLEADER MR.MOHAMMED RAFIQ

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE GOLD LOAN APPLICATION

EXT.P2 TRUE COPY OF THE JUDGMENT IN O.P.NO.22461/97 DT.26.2.98

EXT.P3 TRUE COPY OF THE LETTER ISSUED BY THE SALES TAX OFFICER TO THE PETITIONER DT.30.12.98.

/ TRUE COPY /

H.L.DATTU, C.J. & K.T.SANKARAN, J.

O.P.No.4191 of 1999

Dated, this the 14th day of August, 2007

JUDGMENT

H.L.Dattu, C.J.

A nationalised bank is before us in this original petition, inter alia, seeking the following reliefs:

> "a) Issue a writ of certiorari or any other appropriate writ, direction or order in the nature of a writ declaring the said sub-clause (g) of clause (viii) of section 2 of the Sales Tax Act, introduced by the Finance Bill 1998 as ultravires and unconstitutional and quash the same;
>
> b) Issue a writ of certiorari or any other appropriate writ order or direction quashing Exhibit P3 notice as unconstitutional, illegal and arbitrary;
>
> c) Issue a writ of mandamus or any other appropriate writ, direction or order in the nature of a writ, forbearing the respondents from proceeding with any action against the Petitioner bank pursuant to the amendment of the KGST Act of the word "Dealer" and levy any sales-tax on the sums received by them on public auction of pledged gold ornaments by the various branches of the petitioner bank;
>
> d) Pass such any further or other order or orders as this Hon'ble Court may deem fit and necessary in the circumstances of the case and thus render justice."

(2) A similar issue came up for consideration before the apex Court in the case of *Federal Bank Ltd. and others* v. *State of Kerala and others* [(2007) 4 SCC 188]. In the said decision the Supreme Court has held thus:

> "As pledgees, the banks, acting under Section 176 of the Contract Act, 1872, have a right to sell the goods. That sale is not as agents but is in exercise of the statutory power under the 1949 Act. Although the sale is on behalf of the pledgor, the same is in exercise of statutory power.
>
> Moreover, in view of the contents of Forms A and B of Schedule III prescribed by Section 29 of the 1949 Act for maintaining balance sheet and profit and loss account respectively, the sale of pledged assets takes place in the

> course of banking business. Therefore, the banks, in selling the goods pledged to them, did not act as agents of the borrowers/pledgors and their sale is in exercise of statutory power under the 1949 Act. Although under Section 8 of the 1949 Act banks are prohibited from trading in goods, Section 8 read along with Schedule III to the 1949 Act makes it clear that dealing in non-banking assets is a banking business and falls within the exception made in Section 8. When a pledged article is sold in an auction, the bank recovers not only its dues but also recovers interests and its other charges. This realisation falls within the parameters of Schedule III to the 1949 Act. Therefore, sale of pledged ornaments falls within the course of banking business under the 1949 Act. In the circumstances, such transactions are taxable under Section 2(viii)(g) read with Section 5 of the 1963 Act."

(3) Following the dicta of the apex Court, this original petition requires to be rejected and it is accordingly rejected.

(4) Consequently, C.M.P.No.7191 of 1999 is also dismissed.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns